IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL MISC. APPLICATION NO. 246 OF 2005

STATE OF GOA ....Applicant

Versus

MAHESHWAR CHANDRAKANT GHADI ....Respondent

Ms. Winnie Coutinho,P.P. for the State.
Mr. A. Kansar, Advocate for the Respondent.

Coram:- N. A. BRITTO, J.

Date:- 19th January, 2006

P.C.

Heard Shri Kansar, the learned Advocate on behalf of respondent/accused and Ms. Coutinho, the learned P.P. for the State.

2. The State has sought Leave to Appeal against the acquittal of the accused under Sections 417 and 506 (ii) I.P.C., by Judgment/Order dated 29.06.2005.

3. The matter was partly heard on the last hearing. I have perused the records and proceedings. It appears that accused came to be prosecuted in the said case only after the father of the alleged victim Rajashri Matnekar, filed a complaint/FIR on 26.02.2002, at a time when the said alleged victim P.w.1, Rajashri Matnekar was pregnant of 33 to 34 weeks.

4. The case of the said P.w.1 Rajashri, who was admittedly 21 years of age was that she developed friendship with the accused in the year 2001 and that in May/June of that year, she became pregnant. It was stated by her that her friendship with the accused developed since the year 2001, and it was so developed, that it went to the extent of she having physical intimacy with the accused from the year 2001. P.w.1, Rajashri

Matnekar, also stated that the accused had promised her that he would marry her and because of that, she had allowed the friendship to grow to that extent. She had also stated that the physical intimacy with the accused had resulted in she becoming pregnant.

5. As already stated, the accused was prosecuted after investigations on the said complaint/FIR filed by the father of P.w.1, Rajashri Matnekar. The evidence of P.w.1, Rajashri Matnekar, shows that both of them namely P.w.1 and the accused were living separately at two different places at different times as husband and wife. It appears that the case against the accused was based particularly on the second aspect of Section 415 I.P.C. Section 417 provides that whoever cheats is to be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both, and, Section 415 defines cheating and states that whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived, to do or omit to do anything which he would not do or omit if he was not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to cheat. Shri Kansar, the learned Advocate for the accused has submitted that the prosecution had to prove that the accused had made a false promise to the said victim Rajashri Matnekar,that he would marry her but the said ingredient of the offence was not established by the prosecution either through the evidence of P.w.1, Rajashri Matnekar or other witnesses examined by the prosecution. It appears that the case of the prosecution was based on the second part of Section 415 namely "intentional inducement by the accused to the victim to do or omit to do anything which he would not do or omit if he were not so deceived." In other words, the prosecution had to prove that a false promise was made by the accused that he would marry her thereby making her to accede to the request of the accused to have sexual intercourse with her. The overall reading of the evidence of the complainant, does not show, as to when the accused had made a promise to the accused that he would

marry her and, on which date, on account of the said statement or promise made by the accused that the said victim acceded to his request to have sexual intercourse. In other words, there is no categoric statement made by P.w.1, Rajashri, that on any particular day, before she gave in to sexual intercourse by the accused, that the accused had made such a promise to her. On the contrary, it can be seen from her evidence that P.w.1 Rajashri and the accused became friendly from 2001 and their friendship developed eventually leading to physical intimacy. Even if the accused had made such promise, it appears that the accused was initially inclined to honour it for the accused had told the said victim to bring the birth certificate for the registration of their marriage and, it appears that, the uncle and another relative of the accused, who intervened, and took the accused away from the place where the accused and P.w.1, Rajashri Matnekar were residing separately thereby preventing them from marrying. Although P.w.1, Rajashri Matnekar, inspite of the said pregnancy and that too of about 33 to 34 weeks, chose not to complain against the accused, this would make her case doubtful considering that the complaint came to be filed only by her father and that is only on or about 26.02.2002. The facts stated by the complainant do not convincingly show that the accused had made a false promise that he would marry her and on that count, P.w.1, Rajashri, had acceded to the request of the accused to have sexual intercouse with him. It was incumbent upon the prosecution to prove that the accused had not only made a promise to marry P.w.1 Rajashri but it was made with dishonest intention.

As regards the threat under Section 506(ii) I.P.C. is concerned, there is also no categorical statement in the evidence of P.w.1, Rajashri, as to when exactly the same was conveyed to her. Considering the evidence on record, produced on behalf of the prosecution, there was no other conclusion possible as regards the acquittal of the accused under Sections 417 and 506(ii) I.P.C., irrespective of other observations made by the learned J.M.F.C.,Bicholim.

6. In my view, this is not a fit case to grant Leave to Appeal. Hence the application is hereby rejected.

N. A. BRITTO, J.

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